

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**
Columbia Division

Disability Rights South Carolina, et al.,

Plaintiffs,

v.

McMaster, et al.,

Defendants.

Civil Action No.: 2:21-cv-2728-MGL

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' EMERGENCY
MOTION TO STAY INJUNCTION
PENDING APPEAL**

For the reasons set forth in Plaintiffs' filing in the United States Court of Appeals for the Fourth Circuit (ECF 87-1), Plaintiffs oppose Defendants' request to stay this Court's Order granting injunctive relief pending appeal. In support thereof, Plaintiffs fully incorporate their filing in the Fourth Circuit and further assert the following:

1. The injunctive relief issued by this Court is vital for ensuring that South Carolina schools continue to be free to adopt and enforce masking requirements without fear of legal or economic reprisal. Withdrawing that relief would needlessly inject uncertainty and would undermine the strides made by schools to ensure students with disabilities are able to safely access the classroom.

2. In the wake of this Court's Order, additional schools have adopted masking requirements, schools that had already adopted masking requirements are now protected from retaliation, and still others are exploring more targeted masking requirements.

3. Specifically, multiple school districts in South Carolina have adopted masking requirements following the Court's order—including in Jasper County,¹ Hampton County,² Sumpter County,³ and Richland School District 2.⁴

4. The court's preliminary injunction also provided vital legal reassurance to many districts that had already implemented mask mandates, including those in Charleston County,⁵ Chester County,⁶ Marlboro County,⁷ Richland County 1,⁸ Florence School District 1,⁹ and

¹ Alyssa Jackson, *Jasper Co. School Board votes to require masks in school*, WTOC 11 (Oct. 11, 2021), <https://www.wtoc.com/2021/10/12/jasper-co-school-board-votes-require-masks-school/>.

² Michael M. Dewitt, Jr., *Hampton County School District once again mandates indoor masking*, Bluffton Today (Oct. 12, 2021), <https://www.blufftontoday.com/story/news/local/hampton-county-guardian/2021/10/12/hampton-county-school-district-once-again-mandates-indoor-masking/6089973001/>.

³ *Sumter schools to require students, employees, visitors to wear face masks in schools*, WLTX (Oct. 1, 2021), <https://www.wltx.com/article/news/education/sumter-school-mask-requirement/101-93346de6-4db1-495e-92e3-bc474b85a8e9>.

⁴ Lucas Daprile, *Richland 2 schools now require all students and employees to wear masks*, State (Oct. 1, 2021), <https://www.thestate.com/news/local/education/article254623392.html#storylink=cpy>.

⁵ Summer Huechtker, *Charleston Co. School District starts mandatory mask mandate*, WCSC (Sept. 20, 2021), <https://www.live5news.com/2021/09/20/charleston-co-school-district-starts-mandatory-mask-mandate/>.

⁶ *Chester County School Board stands by decision to require masks after federal judge blocks S.C. ban on mandates*, WBTV (Sept. 29, 2021), <https://www.wbtv.com/2021/09/29/chester-county-school-board-stands-by-decision-require-masks-after-federal-judge-blocks-sc-ban-mandates/>.

⁷ Tyler Jeski, *Marlboro County School District keeping mask mandate despite Supreme Court ruling*, ABC 15 (Sept. 2, 2021), <https://wpde.com/news/local/marlboro-county-school-district-keeping-mask-mandate-despite-supreme-court-ruling>.

⁸ *Richland One keeping mask mandate despite Supreme Court ruling*, WISC (Sept. 2, 2021), <https://www.wistv.com/2021/09/02/richland-one-keeping-mask-mandate-despite-supreme-court-ruling/>.

⁹ Tyler Jeski, *School board tables discussion, Florence 1 mask mandate remains in effect*, ABC 15 (Sept. 9, 2021), <https://wpde.com/news/local/florence-1-mask-mandate-remains-in-place-after-discussions-tabled>.

Florence School District 3.¹⁰ Prior to the injunction in this case, two of these districts had been sued by Defendant Wilson and a third was sued by private parties.

5. The court's preliminary injunction has also enabled schools to consider adopting targeted masking policies. For example, on information and belief, Orange Grove Charter School in Charleston has encouraged parents to contact administrators if their children have needs that could implicate section 504 and Title II and will be determining individual classroom mandates based on responses. Additionally, on information and belief, a school in Beaufort County is exploring masking requirements for children who sit adjacent to vulnerable students. These measures, though limited, were not possible while Proviso 1.108 was in force.

6. As this Court found, the ability of schools to adopt measures to address the needs of their community is critical to prevent irreparable harm and safeguard the rights of students with disabilities that heighten their risk of severe illness should they contract COVID-19. To withdraw that support pending appeal is contrary to the prevailing legal standard and, furthermore, would exacerbate the harm shouldered by Plaintiffs who seek to safely participate in their public classrooms.

WHEREFORE, Plaintiffs respectfully ask the court to **deny** Defendants' Motion to Stay.

Dated: October 19, 2021

Respectfully submitted,

(Signature blocks on following page)

¹⁰ Heather Gale, *Florence School District 3 to now require masks for students, staff and visitors*, ABC 15 (Sept. 2, 2021), <https://wpde.com/news/local/florence-school-district-3-to-now-require-masks-for-students-staff-and-visitors>.

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*Motion to proceed *pro hac vice* forthcoming

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